IN THE HIGH COURT OF JUDICATURE AT BOMBAY

O.O.C.J.

NOTICE OF MOTION NO.869 OF 2005

IN

SUIT NO.854 OF 2003

...

Ambrish Singh Thakur ...Plaintiff

v/s.

Nanji Arjun Rathod and ors. ...Defendants

And

Smt.Laxmi nanji Rathod & Ors. ...Respondents

...

Mr.Ajit Karwande for the Plaintiff.

Ms.Kalpana Trivedi for the Defendants.

...

CORAM: D.K.DESHMUKH, J.

DATED: 29TH SEPTEMBER,2005

P.C.:

1. This Notice of Motion is taken out by the Plaintiffs for setting aside the abatement of the suit as against the Defendant No.1. The date of death of Defendant No.1 is 3-8-2003. According to the Plaintiffs, they came to know of the death of the Defendant No.1 on 4-3-2004. This notice of motion has been taken out on 6-5-2005. After coming to know of the death of the Defendant No.1 except for writing a letter to the lawyer, who was representing the deceased Defendant No.1, the Plaintiffs have done nothing. Therefore, explanation that has been given for delay by no stretch of imagination can be accepted as adequate or sufficient. However, the Plaintiffs have expressed their willingness to pay as and by way of costs an amount of Rs.25,000/- to the Defendants Nos. 2 to 4 who are contesting this Notice of Motion.

2. In this view of the matter, therefore, the Notice of Motion is granted in terms of prayer clause (a) subject to the condition that within two weeks from

today the Plaintiffs shall pay to the Defendants Nos. 2 to 4, Rs.25,000/- as costs of this Notice of Motion and produce a receipt issued by Defendants Nos. 2 to 4 before the Prothonotary & Sr.Master of this Court.

3. If the receipt for having paid the aforesaid amount is not produced within the aforesaid period, the office shall treat this Notice of Motion as dismissed.

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